

Exhibit A

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

C.A. NO: 4:21-CV-10572-TSH

KPM ANALYTICS NORTH AMERICA CORPORATION,
Plaintiff,

vs.

Blue SUN SCIENTIFIC, LLC, THE INNOVATIVE
TECHNOLOGIES GROUP & CO., LTD., ARNOLD EILERT,
MICHELLE GAJEWSKI, ROBERT GAJEWSKI, RACHAEL
GLENISTER, GREGORY ISRAELSON, IRVIN LUCAS,
AND PHILIP OSSOWSKI,
Defendants.

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REMOTE DEPOSITION of IRVIN LUCAS, a
witness called on behalf of the Plaintiff, taken
pursuant to the applicable provisions of the Federal
Rules of Civil Procedure, before Susan Baxter, a Court
Reporter and Notary Public, in and for the
Commonwealth of Massachusetts, conducted remotely, on
Wednesday, April 27, 2022, commencing at 10:17 a.m.

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1 particular line items I want to ask you about.

2 What are the references to a top window item
3 being sold?

4 A Top window, I just spoke about earlier, 13 of
5 those 17 instruments on NIR were top window,
6 meaning that you load the sample on top of the
7 instrument, as opposed to that sideloader that we
8 spoke about with the auto sampler.

9 Q So that's to the forage machines?

10 A That's correct.

11 Q So if you go to the last couple of lines, just
12 look at 228 through 240, those lines for example.
13 228 is an invoice for a Phoenix 5000 top window?

14 A Correct.

15 Q Is that the actual machine being sold there?

16 A Yes, it is.

17 Q That was for \$25,682.50?

18 A Correct.

19 Q And then two lines down there's another Phoenix
20 5000 top window unit being sold for \$41,422?

21 A Correct.

22 Q And is the difference in the cost column between
23 those two because of the -- what you explained
24 before being the cost relationship that you have

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1 with ITG where they charge you 65 percent of what
2 you're getting?

3 A That's correct.

4 Q What's the -- in line 238 for customer R&R
5 Machine Works?

6 A Yes.

7 Q A \$30,000 amount, and it says for an R&R analyzer
8 top window, what's the R&R analyzer?

9 A Okay, so R&R Machine Works, this is a customer
10 that they wanted to have an OEM, or I guess
11 called a private label version. They use NIR in
12 conjunction with some steam chest some industrial
13 equipment that they sell. And what they wanted
14 was the ability for us to put their logo on the
15 instrument and then for them to be able to go on
16 brand it as their own. That way, when they're
17 out at a trade show, or something of that nature,
18 someone doesn't see oh, that's a Blue Sun, I'll
19 go to Blue Sun and circumvent R&R. So it's a
20 Phoenix just with R&R's logo on it, and R&R
21 branding.

22 Q Okay. How long has R&R been a customer of Blue
23 Sun?

24 A I'd say since probably September or so of 2019.

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1 Q Prior to that, were they a Unity customer?

2 A They did have a SpectraStar.

3 Q Who's the sales representative?

4 A Sales representative initially on that, I worked

5 with R&R. Now Rachael works with them.

6 Q Do either one of you work with R&R while you were

7 at KPM?

8 A I believe Rachael did work with them while she

9 was at KPM.

10 Q How many R&R branded Phoenixes has Blue Sun sold

11 to R&R?

12 A I believe as of today that number is going to be,

13 I believe, nine.

14 Q When was the first one?

15 A As I mentioned, September October 2019, I

16 believe.

17 Q When was the most recent one?

18 A The most recent one would have been within the

19 last six weeks. I believe about three or four

20 units.

21 Q This reference in line 238, that's just for

22 single unit and looks like February 11th of '22?

23 A Looks like this is a down payment for their four

24 units that they got in April.

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1 Q I see. Has Blue Sun provided any service to the
2 R&R SpectraStar unit?

3 A No, I have not.

4 Q Let's take a look at line 104. It's another sale
5 of R&R branded Phoenix 5000s to --

6 A Correct.

7 Q Can you tell how many units?

8 A I believe that would be three units.

9 Q That's a payment in full as opposed to the down
10 payment we saw?

11 A That's correct.

12 Q Just to finish up on R&R just going up line 37.

13 A Okay.

14 Q Would that be the first sale of Phoenix units to
15 R&R?

16 ,A Yes, it would. That would be two units.

17 Q How many locations does R&R have?

18 A R&R themselves have one location. Like I said
19 they utilize the instrument in conjunction with
20 machinery that they supply their customers, and I
21 don't know how many customers they have.

22 Q Given R&R's history with KPM, does Blue Sun
23 consider its ability to sell to R&R to be
24 prohibited by the injunction?

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1 MR. RITCHIE: Objection. Calls for
2 legal conclusion. You can answer.

3 A No, we do not.

4 Q Why not?

5 A We have not performed any services, nor had
6 anybody sold any SpectraStar or KPM materials to
7 them prior to -- after July 2nd of 2018.

8 Q When was it that R&R had purchased its Unity NIR
9 product?

10 A I don't know myself, but what I was told was
11 prior to July 2, 2018.

12 Q And who told you that?

13 A That's what Ms. Glenister told me.

14 Q Do you know what the bases of her believing that
15 was?

16 A She, I believe, sold them their instruments.

17 Q And she represented to you that that was before
18 the cutoff date of July 2nd of 2018?

19 A Correct.

20 Q If that was not the case, if she had sold to them
21 after July 2, 2018, then the sales that Blue Sun
22 made would have been in violation of the
23 preliminary injunction as you understand it,
24 correct?

ATTORNEYS EYES ONLY

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1 MR. RITCHIE: Objection. Calls for a
2 legal conclusion. You can answer with any
3 non legal understanding you have, Irvin, but
4 don't include any information received from
5 counsel, please.

6 A Yes. Towards that factor. Yes, I would say so.

7 Q If her sale had been after July 2, 2018 with KPM,
8 then Blue Sun would have been prohibited from
9 selling to R&R?

10 MR. RITCHIE: Same objection.

11 A I would -- I believe so, but there is an
12 opportunity KPM could sell to R&R, so I don't
13 know for sure.

14 MR. GUTKOSKI: Why don't we take a 10
15 minute break. Come back at 3:05.

16 (Brief Recess)

17 BY MR. GUTKOSKI:

18 Q Mr. Lucas, just a follow up question that
19 occurred to me before we broke, we're talking
20 about sales to R&R Machine.

21 What's the total number of units that
22 you've sold to them under Phoenix 5000s branded
23 R&R?

24 A I believe that was nine.

ATTORNEYS EYES ONLY

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1 Q And they've all been shipped at this point?

2 A Yes, they have.

3 Q Are there any others that you expect to sell to
4 them?

5 A No, none that are in the pipeline right now.

6 MR. GUTKOSKI: I'll mark six exhibits.
7 So this will be one through six on our list. It
8 will be exhibits 18, 19, 20, 21, 22, 23. Go
9 ahead and mark them all and put them up. It's
10 just one page. Take a look and I'll ask you
11 about them collectively.

12 (Whereupon, Offer Letters, were marked
13 as Exhibit Nos. 18 through 23,
14 respectively.)

15 A Okay. So far just three of them are up there.

16 Q Okay.

17 A Okay, two more now. I have all six up and I can
18 scroll between them.

19 Q You're more in depth than I am. Do you recognize
20 each of what we marked as Exhibits 18 through 23?

21 A Yes, I do.

22 Q What are they?

23 A These are essentially the offers of employment to
24 Josh Sarver, myself, Doug Evans, Rachael

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1 CASE: KPM Analytics North America Corporation vs.
2 Blue Scientific, LLC, et al

3 DEPOSITION OF: Irvin Lucas

4 Acknowledgment of Deponent

5 I, Irvin Lucas, do hereby declare that I
6 have read the foregoing transcript, I have made
7 any corrections, additions, or changes I deemed
8 necessary as noted above to be appended hereto,
9 and that the same is a true, correct and complete
10 transcript of the testimony given by me.

11 _____
12 Irvin Lucas Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 _____ DAY OF _____, 20__.

16 _____

17 Notary Public

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